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 Before the
 Federal Communications Commission
 Washington, D.C. 20554

MM Docket No. 95-28

In the Matter of

Amendment of Section 73.202(b) RM-8593
 Table of Allotments,
 FM Broadcast Stations.
 (Stamping Ground, Kentucky)

NOTICE OF PROPOSED RULE MAKING

Adopted: February 21, 1995; Released: March 3, 1995

Comment Date: April 24, 1995

Reply Comment Date: May 10, 1995

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Scott County Broadcasting, Inc., ("petitioner"), permittee of Station WKYI(FM), Channel 256A, Stamping Ground, Kentucky, proposing the substitution of Channel 241A for Channel 256A at Stamping Ground to enable Station WKYI(FM) to increase its power to six kilowatts and to eliminate interference within its protected contour.¹ Additionally, petitioner seeks the modification of Station WKYI(FM)'s construction permit to specify operation on Channel 241A in lieu of Channel 256A at Stamping Ground. Petitioner submits information in support of the proposal and states its intention to apply for the channel, if allotted.²

2. We believe the public interest would be served by proposing the substitution of Channel 241A for Channel 256A at Stamping Ground, Kentucky, since it would enable Station WKYI(FM) to provide the community with an improved FM service. An engineering analysis has determined that Channel 241A can be allotted at Stamping Ground in compliance with the Commission's minimum distance separation requirements at petitioner's requested site with a site restriction of 12.0 kilometers (7.5 miles) east

to avoid short-spacings to the allotment and application site for Channel 242C3 at Stanford, Kentucky, and Station WKID(FM), Channel 240A, Vevay, Indiana³

3. As requested, we also propose to modify petitioner's construction permit for Station WKYI(FM) to specify operation on Channel 241A. In addition, we will not accept competing expressions of interest for the use of Channel 241A at Stamping Ground because the procedures outlined in *Modification of FM and TV Licenses*, 98 FCC 2d 916 (1984) and Section 1.420(g) of the Commission's Rules do not apply in this case since no upgrade in facilities is contemplated.⁴

4. Accordingly, we will seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Stamping Ground, Kentucky	256A	241A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **April 24, 1995**, and reply comments on or before **May 10, 1995**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

James P. Gray, President
 Scott County Broadcasting, Inc.
 10 Trinity Place
 Fort Thomas, Kentucky 41075
 (Petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table

¹ Petitioner also proposes the substitution of Channel 257C3 for Channel 257A at Harrodsburg, Kentucky, to enable Station WHBN(FM) to increase its power to 25 kilowatts as a Class C3 facility and expand its service area. However, we will not propose this upgrade because the licensee of Station WHBN(FM) is not a joint petitioner and has not requested such an upgrade.

² Although the petitioner's request was signed, it failed to include an affidavit verifying that the statements contained in the petition were accurate to the best of its knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules

concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. See also *Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911, 3919 n.41 (1990). The petitioner is requested to rectify this omission in its comments.

³ The coordinates for Channel 241A at Stamping Ground are North Latitude 38-17-43 and West Longitude 84-33-10.

⁴ The Commission considers channels of the same class to be equivalent unless showings have been made that a station cannot be constructed for reasons such as environmental consequences or air hazards. See *Vero Beach, Florida*, 3 FCC Rcd 1049 (1988), rev. denied, 4 FCC Rcd 2184, 2185 (1989).

of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in

reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.